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SENATE BILL 2159 By  
Dixon

HOUSE BILL 2118  
By Bowers

AN ACT to amend Tennessee Code Annotated, Title 54, Title 55,  
Title 65 and Title 68, relative to the transportation of certain  
hazardous materials.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 15, is amended by adding  
the Sections 2-5 as a new part to be appropriately designated.

SECTION 2. As used in this act, the term:

(1) "Carrier" means any person engaged in the transportation on the public roads  
of this state of goods or property in, to, or through this state, whether or not such  
transportation is for hire;

(2) "Cask" means a package certified by the United States nuclear regulatory  
commission for the transportation of spent nuclear fuel or high-level radioactive waste.

(3) "Department" means the department of safety;

(4) "Hazardous material" means and includes radioactive materials, liquefied  
natural gas (LNG), and polychlorinated biphenyl (PCB);

(5) "High-level nuclear waste" means liquid wastes from reprocessing irradiated  
reactor fuel, solids into which such liquid wastes have been converted, and any other  
high-level radioactive waste as defined by the U.S. nuclear regulatory commission;

(6) "Person" means and includes any individual, corporation, partnership,  
association, state, municipality, political subdivision of a state, and any agency or

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instrumentality of the United States government or any other entity and includes any officer, agent, or employee of any of the above;

(7) "Shipper" means any person who arranges for, provides for, solicits a carrier for, consigns to a carrier for, or contracts with a carrier for shipment or transport of goods or property; and

(8) "Spent nuclear fuel" means nuclear fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

SECTION 3. (a) Notwithstanding any other provision of Tennessee Code Annotated, Titles 54, 55, or 68, to the contrary, any person transporting hazardous material on the public roads of this state shall be subject to the requirements of this act.

(b) No person, including the state or any agency thereof, shall transport hazardous material in, to, or through this state on the public roads of this state, whether or not the hazardous material is for delivery in this state and whether or not the transportation originated in this state; nor shall any person deliver in this state any hazardous material to any person for transportation; nor shall any such person accept any hazardous material for transportation in this state without compliance with the following requirements: such materials shall be packaged, marked, labeled, handled, loaded, unloaded, stored, detained, transported, placarded, and monitored in compliance with rules and regulations promulgated by the commissioner of safety pursuant to this act and consistent with federal law. Compliance with such rules and regulations shall be in addition to and supplemental of other regulations of the United States department of transportation, United States nuclear regulatory commission, and state fire marshal, applicable to such persons.

(c) The commissioner of safety shall promulgate rules and regulations such that no person shall arrange for the transportation of or cause to be transported in, to, or through this

state on the public roads of this state any hazardous material unless such person shall notify the department of safety or its designee in accordance with such rules and regulations.

(d) Knowledge by a shipper that a carrier proposes to transport hazardous material in or through this state on the public roads of this state shall be sufficient contact with this state to subject such shipper to the jurisdiction of the courts of this state with respect to such transport.

(e)(1) No transportation of hazardous material shall take place in or through this state until the department or its designee issues a permit authorizing the applicant to operate or move upon the state's public roads a motor vehicle or combination of vehicles which carry hazardous materials. The department or its designee may require changes in the proposed dates, times, routes, detention, holding, or storage of such materials during transport as necessary to maximize protection of the public health, safety, welfare, or the environment. The department is authorized to promulgate reasonable rules and regulations which are necessary or desirable in governing the issuance of permits, provided that such rules and regulations are not in conflict with the other provisions of law.

(2) With respect to shipment of spent nuclear fuel or high-level nuclear waste, the department shall require as a condition of any permit, to the extent not inconsistent with federal law, the following:

(A) Each permit application and permit shall contain the names, ages, and addresses of each driver who will be operating such vehicle within the state, documentation of the carrier's federal safety rating, proof of federally required liability insurance, and a nuclear incident prevention and a cleanup plan acceptable to the department and containing at least the following:

(i) identification of each route and shipment to which such permit is applicable;

(ii) identification of emergency response personnel and resources available along each route;

(iii) The name, address, and emergency response training record of emergency response personnel to accompany each shipment; and

(iv) identification of foreseeable accident and shipment disruption scenarios, including worst-case scenarios, and written response scenarios applicable to each such accident or disruption scenario. Accident and disruption scenarios shall include estimates of the direct costs and economic impact of each identified occurrence. Response scenarios shall include estimates of the direct costs and economic impact of each identified response.

(B) Each permit application and permit shall specify the route to be followed for each shipment covered by such permit. The carrier shall not deviate from the routes designated in the permit except to make local pickups and deliveries or when emergency conditions would make continued use of the designated route unsafe or to refuel or when the designated route is closed due to road conditions, road construction, or maintenance operations. Any deviation from the designated permit route shall be reported at the earliest practicable time to the department.

(C) Routes identified on such applications and permits must be consistent with all applicable state and federal laws and regulations, and each route must be the safest practicable route calculated to minimize the potential exposure of members of the public to the shipment while maximizing availability of emergency response personnel and resources along the route. Calculations, weight criteria, and other information utilized by the carrier in the identification of the safest practicable route shall be attached to the application. The commission, to the extent practicable, shall restrict spent nuclear fuel or high-level nuclear waste shipments to limited access roads and shall require avoidance of standard metropolitan statistical areas having a population of one hundred thousand (100,000) or more according to the 1990 federal census or any subsequent

census. The department shall conduct at least one (1) public hearing on each proposed shipment route before approval thereof.

(D) Each permit application and permit shall list the member of casks of spent nuclear fuel or high-level nuclear waste to be shipped under such permit and shall identify the type and quantity of material contained in each cask, the origin and destination of each cask, and the identifying serial number of each cask.

(f) No driver may operate a vehicle permitted under this section and any applicable rules and regulations unless such driver has successfully completed a radioactive materials hauler driver training course approved by the department of safety. The department is authorized to institute an appropriate radioactive materials hauler driver training course in cooperation with other agencies and departments of the state.

(g) Such permit shall be carried in the vehicles or combination of vehicles to which it refers and shall be open to inspection by any law enforcement officer or employee of the department who has been given enforcement authority by the department.

(h) Every permit issued for the transportation of spent nuclear fuel or high-level nuclear waste shall require that such material be transported in convoys of not less than five (5) cask-bearing trucks, escorted by emergency response personnel provided by the carrier of the shipper, unless the commission, for reasonable cause shown and in the interest of safety, shall in writing waive such convoy requirement. The emergency response personnel shall include at least three (3) individuals having one (1) or more years of training in medical responses to irradiation of humans.

(i) All carriers of spent nuclear fuel or high-level nuclear waste are required to notify the department twenty-four (24) hours prior to the transportation of spent nuclear fuel or high-level nuclear waste within this state, identifying the permit under which such fuel or waste shall be shipped and the origin, destination, and place and approximate time of entry into and exit from the state, as appropriate.

(j) For just cause, including but not limited to, repeated and consistent past violations, the department may refuse to issue or may cancel, suspend, or revoke the permit of an applicant or permittee.

(k)(1) The department or the official designated by the commissioner, pursuant to this section and the rules and regulations promulgated by the commissioner of safety, may issue an annual permit to authorize vehicles transporting hazardous materials to be operated on the public roads of this state for twelve (12) months from the date the permit is issued.

(2) The department or the official designated by the commissioner of safety pursuant to this section, and the rules and regulations promulgated by the commissioner, may issue a single-trip permit to any vehicle.

(l) The department shall charge a fee for the issuance of permits. The fee for the issuance of annual trip permits shall be one hundred dollars (\$100) for shipments containing hazardous materials other than spent nuclear fuel or high-level nuclear waste, but there shall be an additional fee payable at the time and under the circumstances set forth in this subsection of two thousand dollars (\$2,000) per cask to be shipped under the annual permit to be paid by the owner of the shipment for the purpose of defraying the expenses of this state incurred in inspection, regulation, management, and training involving such shipments. The shipment fee for spent nuclear fuel or high-level nuclear waste shall be paid either by mail, in which case it must be postmarked at least seven (7) days before the shipment is made, or at the time of the vehicle inspections provided for in this section. Failure to pay such fee shall subject the carrier and the owner of the shipment to a civil action for the recovery of the amount of such fee, plus costs and a reasonable attorney's fee, for which the carrier and owner shall be jointly and severally liable. Such action may be filed in the chancery court of Davidson County or in the chancery court of the county in which the shipment originated or in which it was or should have been inspected pursuant to this section. Operating a motor vehicle engaged in the transportation of spent nuclear fuel or high-level nuclear waste on the public highways of this

state or shipping spent nuclear fuel or high-level nuclear waste on the public highways of this state shall constitute submission to the jurisdiction of the courts of this state for the purposes of such an action.

(m) All vehicles carrying spent nuclear fuel or high-level nuclear waste entering the state on the public highways shall be inspected by personnel designated by the department at the port of entry weigh station nearest the point at which the shipment enters the state or at a location specified by the department. Vehicles carrying shipments originating within the state shall be inspected at the point of origin by personnel designated by the department. All such inspections shall require the vehicle to conform to all applicable federal motor carrier safety regulations and all applicable federal hazardous materials regulations, and in the event that the United States Department of Energy adopts the Enhanced North American Standard Inspection for Transportation of Radioactive Materials, to the requirements of those standards.

(n) For purposes of this act, the department is expressly authorized to contract with the department of environment and conservation, or other state agencies or departments, to perform any activities necessary to implement this act.

(o) Notwithstanding any other provision of this act, the department is authorized to establish such exceptions or exemptions from the requirements of this act, or any provision hereof, for such kinds, quantities, types, or shipments of hazardous materials as it shall deem appropriate, consistent with the protection of the public health, safety and welfare.

(p) This act shall not apply to the transportation, delivery or acceptance for delivery of radioactive materials inside the confines of the authorized location of use by any person authorized to use, possess, transport, deliver, or store radioactive materials by the department of environment and conservation, or by the United States nuclear regulatory commission; nor shall this act apply to the transportation, delivery or acceptance for transportation of radioactive materials under the direction or supervision of the United States Nuclear Regulatory Commission or the United States Department of Defense where such transportation, delivery, or

acceptance for transportation is escorted by personnel designated by or under the authority of those agencies.

(q) This act shall not apply to interstate pipeline facilities which are subject to the jurisdiction of the United States department of transportation under the Natural Gas Pipeline Safety Act of 1968.

(r) In the event of any damage to state property or any discharge of hazardous materials from the authorized shipping package or container or any threat of such discharge which results from the transportation, storage, holding, detention, delivery for transportation, or acceptance for transportation of hazardous materials in this state, the state may recover from any shipper, carrier, bailor, bailee, or any other person responsible for such storage, transportation, holding detention, delivery, or acceptance all costs incurred by the state in the reparation of the damage and all costs incurred in the prevention, abatement or removal of any such discharge or threatened discharge, including reasonable attorney's fees incurred with respect to recovery.

(s) Notwithstanding any other provision of law, a bond or indemnity insurance required of carriers shall be established by rules and regulations of the department and shall for all persons subject to this act, whether intrastate or interstate carriers, be at least in the maximum amount or amounts authorized or required by federal law or regulations. The department shall require applicants for permits for the transportation of spent nuclear fuel or high-level nuclear waste, as a condition of the granting of any such permit, to obtain a bond or indemnity insurance in at least the amount of twenty-five million dollars (\$25,000,000).

(t) In addition to any other liability imposed by law, a violation of any provision of this act is a Class C misdemeanor.

(u) The commissioner of safety is authorized to promulgate rules and regulation to effectuate the purposes of Sections 2 and 3 of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. The commissioner of safety and the commissioner of environment and conservation shall require all sources of radiation to be shielded, transported, handled, used, stored, or disposed of in such a manner to provide compliance with this act and rules, regulations and standards adopted pursuant to this act and the requirements of Tennessee Code Annotated, Title 68.

SECTION 5. The department of environment and conservation shall establish, manage and administer a program for the general or specific licensing of persons to use, manufacture, produce, transport, transfer, receive, acquire, own or possess radioactive material including by-product, source, or special nuclear materials or devices, installations, or equipment utilizing such materials including the promulgation of such rules and regulations as the commissioner of environment and conservation may deem necessary to implement and enforce the program. Such rules or regulations shall provide for amendment, suspension, or revocation of licenses. Each application for a specific license shall be in writing on forms prescribed and furnished by the department of environment and conservation and shall state such information and be accompanied by such documents, including, but not limited to, plans, specifications, and reports for new construction or material alterations, as the department of environment and conservation may determine to be reasonable and necessary to decide the qualifications of the applicant to protect the public health and safety. The department of environment and conservation may require any applications or statements to be made under oath or affirmation. Each license shall be in such form and contain such terms and conditions as the department of environment and conservation may deem necessary. No license issued under the authority of this act, and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and the terms and conditions of all licenses shall be subject to amendment, revision or modification by rules, regulations, or orders issued in accordance with this act. Rules, regulations, licenses, and permits relating to the transportation of spent nuclear fuel and high-level nuclear waste, as those terms are defined in Section 2, shall be developed

in coordination with the department of safety and shall be consistent with the requirements of this act. On or before January 1, 1999, the commissioner of environment and conservation shall promulgate any new rules or amendments to existing rules necessary to comply with the provisions of this act in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.